In the light of all the above circumstances, we are unable to agree with the decision of the learned judge. We accordingly allow the appeal and vary the judgment, quashing the award for loss of earning capacity for $67,200 in this case with interest. We also award half costs of this appeal to the appellants. Deposit is refunded.

Appeal allowed.

Solicitors: *Tung & Kumar; Manjeet Singh Dhillon.*

Reported by *Prof Ahmad Ibrahim*

[This Supreme Court judgment was first reported in the original text in Bahasa Malaysia — see *Dewan Bandaraya Kuala Lumpur* v *Suppiah* [1991] 1 MLJ 149. The judgment was translated by the MLJ and is not therefore the official translation.]

Dewan Bandaraya Kuala Lumpur v Suppiah

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-234-1990
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND AJAIB SINGH SCJJ
1 DECEMBER 1990

Local Government — Payment of rates — Sale of rateable holding — Notice of change of ownership not given to the City Council and sale or transfer not recorded in the books of the local authority — Rates to be first charge — Who is liable for payment of rates — Whether goods of the purchaser can be attached — Local Government Act 1976, ss 146, 148 & 160

The respondent in this case purchased a piece of land in Kuala Lumpur on 6 August 1986 and the transfer was registered on 28 October 1986. However, the notice of the transfer was not given by the purchaser or the sellers to the City Council, Kuala Lumpur, within three months of the sale or transfer. The sellers had agreed to pay all rates due up to the completion of the sale, ie 6 August 1986. As the rates were not paid, the City Council by notice dated 15 December 1986 asked the sellers to pay the rates due amounting to $973. As the payment was not made, the City Council sent a letter to the respondent asking for payment. The respondent did not pay the amount claimed but his solicitors replied stating that the transfer had been registered on 28 October 1986 and that he had paid the amount of the rates amounting to $132 for the period up to December 1986. He also sent a cheque for $264 in payment of the rates for 1987. The City Council replied to the letter confirming receipt of the rates of $264 for which it issued its receipt. It stressed in its letter that under s 160(5) of the Local Government Act 1976 the buyer was still liable for payment of the arrears of the rates for the period before his purchase of the property. Subsequently the City Council attached the goods of the respondent. The respondent applied to the magistrate for the release of the goods and when this was refused he appealed to the High Court. The learned judge of the High Court allowed the appeal (see *Suppiah* v *Dewan Bandaraya Kuala Lumpur* [1990] 2 MLJ 44). The City Council appealed to the Supreme Court.

Held, dismissing the appeal:

(1) Section 160(4) and s 160(5) of the Local Government Act 1976 should be construed together. Section 160(4) provides that every person who sells or transfers a rateable holding shall continue to be liable to pay all rates payable before the notice of the transfer has been given or until the sale or transfer has been recorded in the books of the local authority. In this case the notice of transfer had not been given and neither is there evidence that the sale or transfer had been recorded in the books of the local authority. The sellers therefore remained liable for the payment of the rates following the notice sent to them.

(2) On the facts of this case, the City Council cannot rely on s 160(5) of the Act as a basis for attaching the property of the respondent as it is not likely that the Act would require both parties to make the one and same payment.

(3) The interpretation of both s 160(4) and (5) of the Act should be based on the liability already imposed, that is the liability imposed by s 160(4) on the seller unless the notice required under s 160(1) has been given. The duty of giving the notice is placed by law on both the seller and the purchaser. It is clear that the Act has placed the burden of paying the rates on the owners of holdings and not on the occupiers, as in England.

Cases referred to

1 *Lee Wah Bank Ltd v The Commissioner of Federal Capital of Kuala Lumpur* [1962] 1 MLJ 23 (folld)
2 *Home Luck Investments Sdn Bhd* v *Commissioner of Federal Capital of Kuala Lumpur* [1969] 1 MLJ 248 (folld)

Legislation referred to

Local Government Act 1976 ss 146, 148, 160

Appeal from: High Court Civil Appeal No R8-11-128 of 1988 (High Court, Kuala Lumpur)

S Krishna Aiyer for the appellant.
Dato' G Vadiveloo for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): Suppiah s/o Govindasamy (the respondent) applied to the magistrate, Kuala Lumpur, for the City Council, Kuala Lumpur, to release his goods which had been attached under s 148 of the Local Government Act 1976. The magistrate dismissed the respondent's application and the respondent appealed to the judge of the High Court, Kuala Lumpur (See [1990] 3 MLJ 44). Now the City Council, Kuala Lumpur, has appealed against the decision of the judge of the High Court, Kuala Lumpur, after he allowed the respondent's appeal. After hearing the submissions, we dismissed the appeal and now give our reasons for doing so.

In order to better understand the dispute in this appeal, it is necessary to describe the background facts and the relevant statutory provisions. The relevant statutory provisions in the Local Government Act 1976 are as follows:

146 All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code be first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.

160(1) Whenever any rateable holding within a local authority area is sold or transferred it shall be the duty of the seller or transferor and the purchaser or transferee within three months after such sale or transfer to give notice thereof to the local authority in Form I of the First Schedule hereto.

(2) Whenever the owner of any rateable holdings within a local authority area dies it shall be the duty of the person becoming the owner thereof by succession or otherwise to give notice thereof to the local authority within a period of one year of the death in Form J of the First Schedule hereto.

(3) On receipt of such notice the local authority may require the production of the instrument affecting change of ownership or of a certified copy thereof.

(4) Every person who sells or transfers any rateable holding within a local authority area shall continue to be liable for the payment of all rates payable in respect of such holding and for the performance of all other obligations imposed by this Part or by any by-law upon the owner of such holding which become payable or are to be performed at any time before notice of such transfer has been given or until the sale or transfer has been recorded in the books of the local authority.

(5) Nothing herein shall affect the liability of the purchaser or transferee to pay the rates in respect of such holding or to perform such obligation, or affect the right of the local authority to recover such rate or to enforce such obligation under this Part notwithstanding that such rates became payable or such obligations were imposed before notice of such sale or transfer had been recorded.

(6) Every person failing to give any notice shall on conviction be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding six months or to both such fine and imprisonment. [Original English text.]

The background facts of this case are as follows. The respondent by an agreement dated 7 May 1986 purchased a piece of land held under QT(M) 134 Lot No 245, from one Yaacob Sodhy and one Salmah bte Abu Bakar @ Salmah Yaacob Sodhy as sellers. The sale of the land was completed on 6 August 1986 and the transfer was registered on 28 October 1986. However, *no notice* was given by either the sellers or the purchaser to the City Council, Kuala Lumpur, under s 160(1) of the Act within the prescribed period of three months from the date of sale or transfer. The sellers had agreed in the agreement dated 7 May 1986 to pay all rates up to the date of completion, viz 6 August 1986.

The City Council, Kuala Lumpur, by its notice dated 15 December 1986 asked the sellers of the land to pay the rates totalling $973. As payment was not made, the City Council, Kuala Lumpur, sent a letter to the respondent on 18 June 1987 for settlement of the said payment. The respondent did not settle it but his solicitors sent a letter to the City Council, Kuala Lumpur, dated 15 July 1987 in which they explained that the sale had been registered on 28 October 1986 and that the respondent had also made payment in the sum of $132 as the amount of rates for the period up to December 1986. By that letter the respondent also paid by cheque a sum of $264 as payment for the rates for the year 1987. The City Council replied to that letter on 27 July 1987 confirming receipt of the rates in the sum of $264 and it issued a receipt for the said payment. The City Council also stressed in the letter that under s 160(5) of the Local Government Act 1976:

> the new buyer is still liable for payment of the arrear of the rates for the period prior to the purchase. [Translated from Bahasa Malaysia.]

The magistrate dismissed the application of the respondent for the release of the goods attached, based on his interpretation of s 160(5) of the Act. In his judgment the magistrate said as follows:

> This means that although the notice of transfer of ownership was recorded, the buyer is still liable for the payment of the rates assessed. So the respondent has the right to attach the goods of the applicant for the recovery of the arrears of the rates which had not been paid by the sellers. [Translated from Bahasa Malaysia. Translator's note: The word 'cukai tanah' (quit rent or land rent) and 'sewa' (rent) used by the learned magistrate must necessarily refer to the rates in the context and are thus translated as rates.]

In the High Court the judge also gave his interpretation of s 146 and s 160 of the Act. Briefly, the interpretation of the judge may be stated as follows.

The words 'owners of the holdings for the time being' in s 146, says the judge of the High Court, must be given the meaning 'owners for the period for which the rates are imposed'. In other words, the judge was of the opinion that the rates should be paid by the owner of the land at the time when the rates are payable. The judge was also of the opinion that this interpretation is consonant with justice because if otherwise it would bring hardship to the subsequent owner where the local authority has remained inactive in the collection of the rates for several years and then seeks their collection from the new owner. It is unjust that the new owner is required to pay the arrears of the rates for the period for which he is not the owner of the holding.

In our opinion, this interpretation is not accurate and cannot be accepted in the context of the provisions because the object of s 146 of the Act is to make the arrears of the rates a first charge. Furthermore, s 146 of the Act should be read so as not to be in conflict with s 160 of the Act. The words 'owners for the time being' really mean the current owners of the holding.

The confusion in s 146 was probably caused by the section itself which attempts to mix various matters or

propositions. Actually s 146 only lays down the principle as a matter of policy that all rates shall be a first charge. Section 146 now contains three matters or propositions, firstly, the rates, are subject to the provisions of the National Land Code 1965 and shall be a first charge; secondly, the liability falls on the current owner; and thirdly, providing that the subsequent provisions are applicable for the recovery of the arrears of the rates which have not been paid.

Section 160(4) and s 160(5) should be construed together. The object of s 160(4) is to provide that every person which sells any rateable holding shall remain liable for payment of the rates payable from time to time *before* notice of change of ownership is given under s 160(1) or *until* record of the sale or transfer of ownership is made in the books of the local authority. According to the background of this case, the notice was *never given* and there is no evidence that the sale or transfer has been recorded in the books of the local authority. The respondent was given the notice dated 18 June 1987 only after notification by his letter dated 19 December 1986 from the City Council, Kuala Lumpur, which was addressed to the sellers Yaacob Sodhy and Salmah bte Abu Bakar @ Salmah Yaacob Sodhy in connection with the arrears in the sum of $973.

Thus according to the facts of this case the City Council, Kuala Lumpur, cannot rely on s 160(5) of the Act as a basis in law for the attachment of the goods of the respondent because it is not likely that the Act requires both parties to make the same payment.

The interpretation of both the provisions of s 160(4) and s 160(5) should follow the liability imposed *earlier*, viz the liability imposed by s 160(4) on the seller except if the notice in Form I required by s 160(1) has been given. The giving of this notice is the duty imposed by law on both the seller and the purchaser who are liable to a fine of $2,000 or up to six months imprisonment for non-compliance.

It appears settled that this 1976 Act imposes the duty for the payment of the rates on the owners of holdings and not on the occupiers, as in England. The distinction between our statute and that of England has been taken cognizance of in several cases concerning rates — see *Lee Wah Bank* v *The Commissioner of Federal Capital*[1] and *Home Luck Investments Sdn Bhd* v *Commissioner of Federal Capital of Kuala Lumpur.*[2]

We also find that the provisions of s 156 of the Act enable the local authority to take legal actions for the recovery of the arrears of rates which are recognized as debts under the jurisdiction of the relevant court. These provisions may be explained as an alternative for taking action against the seller who defaulted in the payment of arrears of rates.

Finally, it may be of benefit if the aforesaid provisions of the 1976 Act be streamlined and improved from the angle of draftmanship for the purpose of clarifying the real position in respect of the liability of a particular party. The appeal is dismissed with cost.

Appeal dismissed.

Solicitors: *Majid Krishnan Menon & Lee; Vadiveloo & Co.*

[*Translator's note*: The Local Government Act 1976 (Act 171) empowers the local authority in Peninsular Malaysia, with the approval of the State Authority, to impose and collect a form of property tax called a rate in respect of a rateable holding. The learned Chief Justice in his written judgment in Bahasa Malaysia uses 'sewa cukai tanah', 'sewa', 'cukai pintu' and 'sewa atau cukai pintu' which the translator translates into 'rate' or 'rates' as the term used in the statute. Non-payment of the rates may result in attachment and public auction sale of the property. Non-payment of land rent or quit rent is very serious and may result in forfeiture of the land under s 100 of the National Land Code 965: see *Pemungut Hasil Tanah, Kota Tinggi* v *United Malayan Banking Corp Bhd* [1981] 2 MLJ 264.]

Judgment translated by *Wong Kim Fatt*